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No. 91 - 490

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1991

ALFRED H. GREENING, JR.,

Petitioner,

VS.

HONORABLE BEN MILLER, Chief Justice,
Illinois Supreme Court, et al.,

Respondents.

Petition For Writ Of Certiorari To
The Supreme Court Of Illinois

PETITIONER'S REPLY IN OPPOSITION TO
THE BRIEF OF THE RESPONDENT
JUSTICES OF THE SUPREME COURT OF ILLINOIS

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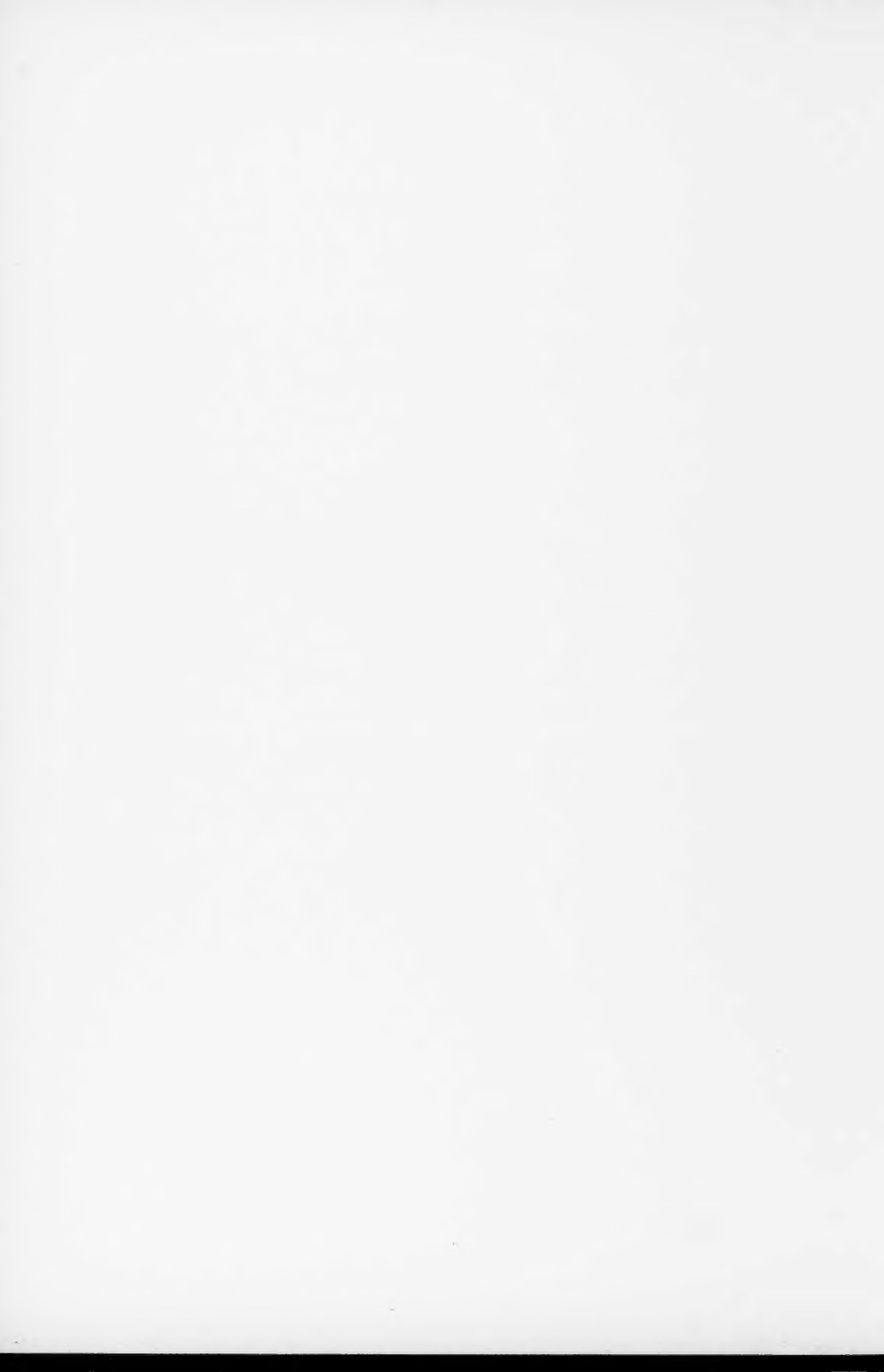


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REPLY OF PETITIONER GREENING

The Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (ARDC) was created by the Court; it functions solely as agent of the Court (*Atty. Reg. & Discpl. Comm. v. Harris*, 595 F.Supp. 107 (1984)); it is funded and administered by rule of the Court; and it carries out a government function (*Hoover v. Ronwin*, 466 U.S. 588 (1984)) which can not be delegated to anyone

not a part of the Court (*In Re Loss*, 119 Ill.2d 186 (1987)). It is an administrative unit of the Court (1982, Ill. Atty. Gen. Op. 57 (No. 82-022)). In this case, the Court directed the ARDC (Bone Tran., 9/21/90, p. 4, l. 21 thru p. 6, l. 16) and the hearing judge (Bone Tran., 6/21/90, p. 25, l. 6-17; p. 19, l. 10-19; p. 17, l. 12-17). Without the Supreme Court's direct participation, the proceedings could not have occurred because this case was not a disciplinary case and there were no rules.

There were separate and well defined procedures for disciplinary cases which were not used here. The ARDC did not function in the role prescribed for it in disciplinary matters. The ARDC acted as the Court's enforcement agent to protect the Court's claim of "inherent" power and at the behest of the Court. Since the ARDC was acting outside its prescribed role, it had no authority to act other than by direction of the Court. The ARDC petitioned the Court for the show cause orders. As the record shows, the ARDC first asked that Greening be held in contempt. By direction of the Court, that request was amended to show cause why Greening should not be suspended (an enforcement procedure which is not specified for failure to pay under Rule 756). The suspension proceeding was later ignored and an indirect criminal contempt proceeding instituted in its place.

Prior to any proceedings, Judge Bone noted that there were no rules of procedure for the proceedings in MR 5916 or for the proceedings which were to take place before him (letter memorandum dated 6/12/90, adopted 6/15/90). Judge Bone reiterated this fact by stating:

"I make these preliminary statements because that is about all I have to guide me, as I am unaware of any rules that are applicable to these proceedings and I have no prior experience in these proceedings." (Bone Tran., 6/21/90, p. 4, l. 6-9)

This is a case of criminal contempt alleged against the Court as the party in interest. Contrary to Respondent's averment, the ARDC throughout the proceedings maintained that it was not a party. The ARDC stated that:

"The Supreme Court * * * has original jurisdiction and the inherent authority to proceed. The Court can delegate certain functions to the [Bone] Court, as they have in this case, and to the Administrator * * * the Administrator [ARDC] is not a party. We are not a prosecutor. [Bone Trans., 6/21/90 p. 13, l. 15-24] The Administrator [ARDC] was appointed to be here by the Supreme Court as the relator and, as the matter is a matter of contempt before the Supreme Court they really have the inherent jurisdiction to act * * * so while not a party as we traditionally speak of a party the Supreme Court is truly the entity whose dignity has been violated * * *." [Bone Trans., 8/6/91 p. 5, l. 21-24; p. 6, l. 1-3]

Therefore, Respondent's reference to rules and the alignment of parties is not correct.

The Supreme Court was *the* final adjudicator but it did not act as *a* final adjudicator. The Supreme Court was a court of both trial jurisdiction and review. The entire proceeding was in the Supreme Court. There was no independent reviewer. Even proceedings before Judge Bone were admitted to be Supreme Court proceedings as stated in the record:

"The proceedings in this matter [before Judge Bone] are proceedings in the Supreme Court and not the Circuit Court. All documents will be captioned * * * in the Supreme Court * * *. All motions and documents will be filed with the Clerk of the Supreme Court * * *." (Letter Mem. of June 12, 1990 adopted by Judge Bone June 15, 1990)

Designating the Respondents by listing the justices individually or referring to them collectively as the Illinois

Supreme Court is a legal equivalency. However, listing the justices individually preserves any distinct, special, constitutional roles. Here, the chief justice is the supreme administrator for the Court (Ill. Const. Art. VI, Sec. 16) and as such has the sole, final authority to administer the Court's direction over the ARDC. The chief justice cannot escape responsibility for the constitutional rights denied Greening before or after the Bone hearing directed by the Court. From that superior executive role he cannot recuse. Both Justice Moran and Justice Miller were chief justices during the proceeding to which Greening was subject.

Respondent references the Federal District Court proceedings of *Greening v. Moran* and the current appeal in the Seventh Circuit. The Federal Court proceedings are to protect Federal due process rights regarding, among other things, the failure of the Illinois Supreme Court to provide a State forum to address State constitutional issues. The instant issue is an appeal from a criminal conviction, an issue which was not before the Federal District and Appellate Courts. It should be noted, however, that the Illinois Supreme Court has used the existence of the multiple forums to hide the true nature of its conduct by stating in each forum that the other forum is protecting Greening's rights thereby demanding that each forum abstain. It uses this process as a mechanism to confuse and to preclude adjudication of issues which the Supreme Court does not want adjudicated.

Respectfully submitted,

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